JOURNAL

THE NATIONAL PRISON PROJECT

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ISSN 0748-2655 NUMBER 19, SPRING 1989

INSIDE . . .

Washington State's Prisoner Numbers Stabilize As National Rate Soars

Jan Elvin

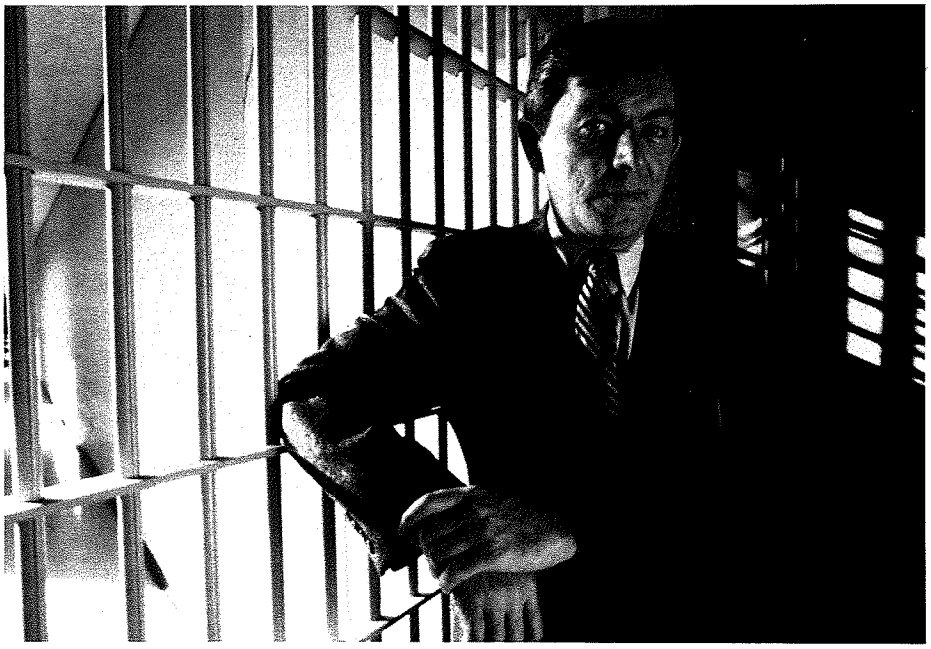
In the midst of a national correctional system choked by serious overcrowding, Washington State's prisoner population dropped in 1987, and continued to fall through 1988.

As of June 30, 1988, there were 604,824 people incarcerated in state and federal prisons nationwide. State prisons are currently operating, on the average, at 106-121% of capacity, with some at more than 150% of capacity. Forty states are under some form of court-imposed mandate to improve facilities, including conditions ruled unconstitutional due to overcrowding. In fiscal year 1988, the numbers of people imprisoned in federal and state institutions rose 6% over the previous year. In contrast to these growing numbers, and during that same period of time, the population in Washington State prisons decreased by 9.7%.

In 1981, Washington State enacted the Sentencing Reform Act (SRA), designed to develop guidelines for judges issuing sentences to criminal offenders. The purpose of the SRA was to make sentences more equitable, and to reduce the disparities many had found in the previous sentencing system. The model for this system was the highly praised 1977 Minnesota Sentencing Guidelines.

Is Washington State's Sentencing Reform Act responsible for the decline in its prison population? Is that decline "real"? What impact has the Act had on Washington's criminal justice system?

Jan Elvin is the editor of the NPP JOURNAL.



Rich Frishman

Chase Riveland, secretary of the Washington Department of Corrections, believes the Sentencing Reform Act gives Washington policy-makers the opportunity to "articulate policy more clearly."

The SRA *has* reduced many disparities in sentencing, and has provided consistency and predictability, as its enactors envisioned. It provided a vehicle for two lawsuits[1] which required that prisoners sentenced prior to SRA enactment in July 1984 would have their sentences reconsidered in light of the new guidelines.

The 1986 legislature amended the SRA to require review of pre-SRA prisoners' sentences as well. These court orders and the ensuing reevaluations alone provided for the early release of 1,800 prisoners—releases "borrowed from the future," according to Glenn Olson, forecaster for the Sentencing Guidelines Commission. Olson says the releases account for most of the decline in population seen over the last several years.

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[1] *In re Myers*, 714 p.2d 303 (1986), and *Addleman v. Board of Prison Terms and Paroles*, 730 P.2d 1327 (1986).

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King County Superior Court Judge Steven Scott, a former member of the Sentencing Guidelines Commission, does not share Olson's view of the causes of the decline. Judge Scott reasons that, "Under the SRA, a lot of people who previously went to prison for less serious offenses no longer go. I think that is why we have seen a decline in the state prison population."

A lot of people who previously went to prison for less serious offenses no longer go.

But hardly anyone involved in criminal justice in the state would characterize the relationship of the SRA to the drop in numbers of prisoners as one of simple cause and effect. In fact, over the long run the SRA may be responsible for an increase in population. Although fewer offenders are now entering the system, those who are sent away will serve longer sentences under the SRA. The population stabilized toward the end of 1988, and indications are that a renewed increase has already begun.

The SRA has mainly offered a mechanism whereby policy-makers, as secretary of corrections Chase Riveland says, can "articulate policy more clearly." It has clarified the often murky waters through which the parole board had to wade in order to determine an offender's sentence.

History of the Washington State Sentencing Reform Act

Sentencing systems or guidelines have been developed in California, Illinois, Indiana, Maine, Minnesota, Washington, and Pennsylvania, and are being developed in the District of Columbia, Delaware, Oregon, Louisiana, and Tennessee. Of these states, only two, Washington and Minnesota, have implemented structured sentencing guidelines that, according to Kay Knapp, former director of the Minnesota Sentencing Guidelines Commission and the U.S. Sentencing Commission, "redistribute discretion, address sentencing purposes and provide certainty and truth in sentencing."

When the Washington State Legislature enacted the Sentencing Reform Act, it delegated implementation of the system to a Sentencing Guidelines Commission, charging it with developing guidelines which would reduce unwarranted disparities in sentences and assure that offenders were treated equitably.

Seeds for the eventual passage of the SRA were sown in 1975, when the Board of Prison Terms and Paroles developed guidelines for fixing minimum terms. No appellate review of those guidelines was afforded, although written reasons were required to support a departure from them.

Over the long run the [Sentencing Reform Act] may be responsible for an increase in population.

In, 1978 the Superior Court Judges Association developed its own set of voluntary sentencing guidelines, and a study found that judges were using them in 70% of the cases. During this period, Washington's prosecuting attorneys also developed guidelines, and by 1981, the use of sentencing guidelines was accepted procedure. The legislature directed the Sentencing Guidelines Commission to give consideration to the existing judicial and prosecutorial guidelines and to the experience gained through the use of those guidelines.

Death of the Rehabilitation Model

The shift from Washington's former indeterminate sentencing system to a determinate system reflected a fundamental change from the basic premises which had previously guided sentencing in this country.

Washington's criminal law had been based on the optimistic social theory that experts—judges, parole boards, and social workers—could diagnose the cause of criminal activity and prescribe sentences which would fit individual needs.

Under this indeterminate sentencing scheme, sentences tended to reflect the individual characteristics of the offender, rather than the severity or type of crime committed.

During the 1970s indeterminate sentencing systems lost favor with many criminal justice professionals, who felt that rehabilitation had not proved effective. If rehabilitation did not work, they reasoned, a prisoner's "rehabilitation progress" should not influence the amount of time served. According to Dave Fallen, research director of the Sentencing Guidelines Commission, most officials admit that they were never very good at judging whether a person was rehabilitated or not.

Modeled largely after Minnesota's guidelines, enacted in 1977, the Washington system is now based on a theory of punishment, and serves as a testament to the failure of the popularity of the rehabilitation model.

Penalties are now more consistent and predictable, structured to parallel the length of the sentence to the crime committed and the offender's criminal history. While the guidelines may mean that some prisoners serve longer sentences, those convicted of similar crimes are at least serving close to the same amount of time.

Judge Now Determines the Term, With Limitations

The judge now determines the length of sentence, regardless of whether the person goes to prison or jail, or does time in the community, but very specific limitations are set by the guidelines. When a decision goes outside the standard range between zero and the statutory maximum, the judge must list the compelling reasons. The decision is subject to appellate review.

Most officials admit that they were never very good at judging whether a person was rehabilitated or not.

"Judges," says Judge Steven Scott, "still largely resent the lack of discretion, although I don't find that it presents a problem. There are exceptional sentences [sentencing alternatives below the standard sentencing range]. You can go outside the guidelines—there's a certain pressure not to, but in most cases the guidelines have worked pretty well."

"Some [judges] rail against it," says Chase Riveland, "and others find comfort in being able to say, 'Well, I can only give you X years because of the guidelines.' My guess is that they would probably split 50-50, and that they are less resistant to it as time goes on."

THE
JOURNAL
OF THE
NATIONAL PRISON PROJECT

Editor: Jan Elvin
Editorial Asst.: Betsy Bernat

Alvin J. Bronstein, Executive Director
The National Prison Project of the
American Civil Liberties Union Foundation
1616 P Street, N.W.
Washington, D.C. 20036
(202) 331-0500

The National Prison Project is a tax-exempt foundation-funded project of the ACLU Foundation which seeks to strengthen and protect the rights of adult and juvenile offenders; to improve overall conditions in correctional facilities by using existing administrative, legislative and judicial channels; and to develop alternatives to incarceration.

The reprinting of *JOURNAL* material is encouraged with the stipulation that the National Prison Project *JOURNAL* be credited with the reprint, and that a copy of the reprint be sent to the editor.

The *JOURNAL* is scheduled for publication quarterly by the National Prison Project. Materials and suggestions are welcome.

The National Prison Project *JOURNAL* is designed by James True, Inc.

Criticism for "Rent-a-Cell" Program and Jail Crowding Problems

As a result of the SRA, many convicted offenders are serving shorter sentences, and are assigned to serve time in jail rather than in prison. Therefore, while prison population has declined, the number of inmates in local jails has jumped dramatically. According to recent reports in the Seattle *Times*, county jails in Washington, particularly King County, where Seattle is located, are critically overcrowded. The King County jail exceeded capacity the day it opened in 1986, with a population of 1,200. The population count has climbed above 1,700; prisoners now sleep on the floor.

In the wake of the jail crowding crisis, Secretary Riveland has been criticized for renting prison space to the Federal Bureau of Prisons, other states, and the District of Columbia instead of turning it over to the counties, which need the additional space. (This rental program is temporary, to be phased out as the state inmate population increases.)

The King County jail exceeded capacity the day it opened—prisoners now sleep on the floor.

The *NPP JOURNAL* asked Riveland for his response to the criticism: He said, "The solution for our counties is to do the same thing the state does, and that is to articulate your policy clearly. One county, Pierce, which includes Tacoma, was not applying good time to its population, while King and most other counties do. Pierce has almost no bail bond program. Driving While Intoxicated (DWI) and domestic violence cases, for whatever reason, are much higher in Tacoma than in other places. These are the kinds of issues that need to be dealt with at the county level."

The jail overcrowding problem, according to news reports, has prompted King County officials to consider at least five options to ease the situation, all of which would require adding cell space. *Not one* considers alternative punishments or even work release as possible solutions.

Other officials in Washington point out factors which account for the rise in jail population. New domestic violence laws, which require police officers to arrest spouses engaged in domestic violence, have resulted in increases in the jail population. A new DWI law demands an automatic jail term.

Chase Riveland leveled some criticism at the counties: "For example, the Sheriff in Thurston County, that we're sitting in, has been very vocal in saying that the SRA meant that he has many more sentenced felons in his jail right now. The data show that he has fewer felons now that he had prior to 1984.[2] He doesn't even use work release. If you give too much relief to the counties they're not going to address the issues. We're using some leverage, trying to keep the pressure on. We have, for political reasons, as much as anything else, given them 200 beds on McNeil Island on a contractual basis. Interestingly, no county has taken us up on that."

Chase Riveland's belief that building more prison space is not the only answer is evident in his comments on the jail crowding predicament:

Now, what happens is that the sheriff stands up and says, 'The state imposed all this on us with the Sentencing Reform Act.' County commissioners with revenue problems want the state to give them money, saying, 'You imposed this on us.' What they're not doing, and what none of the counties have done well, is to figure out a flow system of what is really happening and where the decision points are that are creating this overcrowding.

The strongest answer from my perspective, my very biased perspective, is to articulate your policy clearly, in a way that all the other policy-makers can understand. When you get the Californias of the world who keep pumping billions of dollars into building prisons, and you get short-term legislators who can't really project well and articulate well what is happening, then politics gets away from you. Your get-tough attitude gets away from you.

You can take conservatives and sit down with them and talk with them in terms they can understand and respect—dollars, frequently. The SRA has allowed them to do that.

My fear is that if we start taking a bunch of county people we are simply going to make the net wider. All of a sudden they'll drop felonies to six months instead of a year and then I'll build more institutions and take more people in.

Our hope is that we can work with them, avoid having to build, avoid widening the net.

Impact Statements: A Useful Tool for the Legislature

"Most bills that carry increased penalties are referred to the guidelines commission," he says. "They are assessed, and a very strong impact statement goes to the legislature saying 'if you do this, this is the number of beds you're going to need in the future.' I have found that that has a very dramatic effect on these folks, particularly when they're scrambling for money for other uses, and saying 'my goodness, if we do that, we're going to have to go with another prison.'

"The guidelines here, and the fact that they're adhered to, make it a fairly precise projection as to what the population is going to be."

Riveland serves as chairman of the Governor's Interagency Criminal Justice Workgroup, a policy-setting group made up of heads of all State-level criminal justice agencies.

"They actually roll up their sleeves and get things done," Dave Fallen says of workgroup. "One of their main functions is to produce an executive forecast that all executive agencies can live with, so we don't have quarrels over whose projection is right and whose is wrong. The projections have been uncannily accurate. Even when they are inaccurate, they have the data and the expertise to pinpoint why they went wrong."

Fallen's office provides many of the numbers needed to track the kind of information needed for the workgroup's forecasts. He also compiles data on each convicted adult felon, such as demographic information, offense, prior record, and sentencing data.

Alternatives: Are They Underused?

"The priority on our agenda for the last year and a half and for the next three or four years," says Chase Riveland, "is going to be to divert people, for a whole range of reasons."

Alternatives to incarceration used in Washington include probation, fines, restitution to victims, community service, and split sentences, which consists of a short period of incarceration followed by probation in the community.

Nancy Campbell, director of Community Services in Washington, is working hard to improve community corrections.

"The guidelines structure," she says, "has done a couple of things very well: it allows you to predict our population—what the fiscal impact of a bill in the legislature will be; it also has finally distilled the population, and put the violent in prison and the nonviolent in the community.

"Conceptually it is working in the

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[2]Convictions for violent offenses have decreased under the Sentencing Reform Act at the same time nonviolent convictions have increased. From FY 1982-FY 1987, convictions for violent offenses *dropped* by 19%.

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right direction. Where we have failed is —what about alternatives? While I think we are as good as any other state, we haven't really made strides in developing a spectrum of community corrections sanctions. We need to educate the public that these are viable. Prison is not the only sanction in the world. Prison is fine, of course, in a particular context.

"Prison is not the only sanction in the world."

"My concern is that in this state we are not asking the question: what kind of offenders should be in jail? If you say a certain person should, you have to be willing to pay the cost. If you say they shouldn't, then you need to ask what kinds of other sanctions you can use. The person who goes to jail is likely to be someone who's more alien to the judge, which means usually a minority person who doesn't speak eloquently or have a good education," says Campbell.

"How do we get the community to understand that the offenders in our institutions came out of our communities, and they are going to come back to our communities?"

"That's Just Not the End of the Story"

Judge Steve Scott summarized his views on the SRA, saying, "Despite a recent study showing that whites are more likely to get exceptional sentences than minorities, there *is* more consistency in sentencing.

"The effect [of the SRA] was to lower the amount of time people do for nonviolent offenses and increase the time that people do for most serious violent offenses. That is a legitimate trade-off. The problem is that after you see the initial drop in the population you ultimately get to the point where you get back to an increase because people aren't leaving.

"Whether the SRA is a 'success' is not a simple yes or no answer, but it was successful in some of its objectives. I don't think it's the raving success that you get if you just look at the prison population here compared with everywhere else. That is just not the end of the story. I am sure the population reduction would not have happened were it not for the SRA. The question is, what is going to happen over the next ten years?" ■

Four States Study Policies Affecting Women Offenders

Russ Immarigeon

"The issue of the adult female offender is no longer so slight that society generally or government specifically can be silent on the development of a comprehensive public policy to address it. The economies-of-scale argument is no longer acceptable and certainly not effective or efficient."

—Governor's Committee to Study Sentencing and Correctional Alternatives for Women Convicted of Crime.[1]

"No matter how we try to rationalize, or justify, or sanitize the use of imprisonment, prison confinement is a destructive and irresponsible way to treat human beings, regardless who the human being is or what s/he has done that offends us. Prison takes away a person's dignity. Prison opens wounds. Prison prevents us from establishing more real and loving relationships. Prison legitimizes the barriers we have already built around our hearts, barriers that conveniently allow us to ignore the more unpleasant, uncomfortable aspects of one another's humanity. Prison keeps us blind to the fact that in every human person, no matter how broken, hardened, dominating or cruel, there is a spring of water waiting to flow forth."

—John Cole Vodicka
Alderson Hospitality House[2]

In *Partial Justice*, one of the few historical assessments of the development of women's prisons in the United States, Nicole Hahn Rafter, a historian who teaches at Northeastern University's College of Criminal Justice, observed that "states have historically been all too quick to incarcerate women when less drastic solutions would have been less costly and more efficacious."[3]

Russ Immarigeon, a regular contributor to the NPP JOURNAL, is the director of public policy research for the Maine Council of Churches' Criminal Justice Committee.

States also have had a history of ignoring or forgetting those women they imprison. Women prisoners have not been given the attention they deserve because state policymakers have typically focused on male prisoners who are greater in number, and are more likely to rebel against their conditions of confinement or, perhaps most importantly, to initiate and follow through on legal proceedings against those who incarcerate them.

Signs are now emerging, however, that correctional policymakers are beginning to make explicit decisions based on careful study of imprisoned women in their states. In the early 1980s, for instance, Georgia and Minnesota began to *plan* for model programs within and outside of correctional institutions.[4] Shortly thereafter, state corrections officials in Minnesota were instrumental in organizing the First National Conference on the Female Offender.[5] And, in more recent years, officials in Delaware, Illinois, Maryland and Massachusetts have completed detailed studies of women imprisoned in their states.

Several earlier articles published in the National Prison Project *JOURNAL* have argued that states are still imprisoning too many women.[6] While these new

[1]Governor's Committee to Study Sentencing and Correctional Alternatives for Women Convicted of Crime, *Final Report*, Baltimore, MD, Office of the Governor, (June 1988), p.37.

[2]John Cole Vodicka, "House Notes," *The Trumpet*, 11(4), (December 1988) p.2.

[3]Nicole Hahn Rafter, *Partial Justice: Women in State Prisons, 1800-1935*, Boston, MA, (Northeastern University Press, 1985), p.186. A revised paperback edition of this important study will be published by Transaction Books late this year or early next year.

[4]See, for example, Janet Valente and Elaine T. DeCostanzo, *Female Offenders in the Eighties: A Continuum of Services*, Atlanta, GA, Georgia Department of Offender Rehabilitation, (January 1982); and Shirley Hokanson, *The Woman Offender in Minnesota: Profile, Needs and Future Directions*, Minneapolis, MN, Minnesota Department of Corrections, (December 1986).

[5]See, *Executive Summary of the First National Workshop on Female Offenders*, Minneapolis, MN, Minnesota Department of Corrections, 1985. See, also, *Executive Summary of the Second National Workshop on Female Offenders*, Raleigh, NC, North Carolina Department of Corrections, (1987). The Third National Workshop wil be held in Pittsburgh in April 1989. Copies of these reports are available from the National Institute of Corrections Information Center, 1790 30th St., Suite 130, Boulder, CO 80301, 303/939-8877.

[6]See Russ Immarigeon's articles, "Women in Prison: Is Locking Them Up the Only Answer?" and "Few Diversion Programs Are Offered Female Offenders," in issues Number 11 (Spring 1987) and Number 12 (Summer 1987) of the *NPP JOURNAL*. Russ Immarigeon and Meda Chesney-Lind are revising and expanding these articles for a booklet, tentatively titled *Women's Prisons: Overcrowded and Overused*, which will be published by the National Council on Crime and Delinquency in the late spring or early summer of 1989. Further informa-

WCI [is] "crammed full of female offenders who don't need to be there."

studies, all published after these articles were completed, do not present a full case for the accelerated deinstitutionalization of women prisoners, they do raise the hope that states will begin to reverse contemporary patterns of incarcerating more and more women, with less and less justification. This article, then, will briefly describe the work, the findings and the implications these studies hold for the future of women's imprisonment in the United States.

Delaware

In Delaware, all imprisoned women are sent to the Women's Correctional Institution (WCI) at Claymont. WCI is overcrowded, lacks sufficient programming, and is being expanded to house still more women. However, Delaware is one of the few states where correctional leadership has decided to focus its attention specifically on female prisoners.

Late in 1988, the state asked the National Center on Institutions and Alternatives (NCIA) to describe who was imprisoned at WCI, and to assess which alternative programs were available for women prisoners in Delaware.

NCIA sent a team of interviewers to WCI for several days in October 1988 to interview 125 of the 135 prisoners then housed in the institution. The results of this unique research effort, reported in January, showed that alternative, intermediate sanctions could be used for a sizable percentage of the women currently housed at WCI. Or, as one member of the research team recently told the *NPP JOURNAL*, WCI was "crammed full of female offenders who don't need to be there."

Specifically, NCIA found that 64% of the women at WCI were incarcerated for nonpersonal offenses (nearly 19% were sentenced for very minor offenses), technical violations of probation or parole accounted for approximately 9% of the institution's population, and 82% of WCI's women had strong community and family ties. In addition, NCIA found that nearly 70% of the pretrial women were release-eligible (24% were being held on bonds of $1,000 or less), 18.8% of the sentenced women were serving terms of six months or less, and 46% of the sentenced women were within six months of parole eligibility.

tion about the availability of this booklet can be obtained from Marci Brown, NCCD, 77 Maiden Lane, Fourth Floor, San Francisco, CA 94108, 415/956-5651.

NCIA also found a serious lack of alternative programming for women offenders. At the time of this study, Delaware was (and still is) considering the construction of a 200-bed facility for women. This would expand significantly the number of prison beds available for women. Currently, Delaware imprisons an average of 130 women. WCI has housed as many as 160 women (the average population figure for women has increased from 45 in 1976 to 145 in 1988).

"The state of Delaware," NCIA sagely concluded its report, "should carefully reexamine its current WCI population, reserve cell space for those inmates requiring incarceration, and exhaust all community-based alternatives before making a major and irrevocable commitment to a larger women's facility."[7]

Illinois

Dwight Correctional Center, the only women's prison in Illinois, has been consistently overcrowded throughout the 1980s, despite the 1988 transfer of 72 women to the Logan Correctional Center, a male facility where women now comprise 9% of the total population. Most of the women at Dwight are from Chicago, which is located 80 miles from the prison, but transportation services between the two places is inadequate.

Lutheran Social Services of Illinois offers a volunteer program, The Dwight Project, which transports children to see their mothers. This relieves some of the pressure of incarceration faced by imprisoned women in the state, but the recent transfer to Logan has increased the pains of their imprisonment. Women report that they have lost good time for behavior that would have been considered a minor rule violation at Dwight. They have also had difficulty continuing vocational programs begun at Dwight, and have been frustrated by excess unscheduled and unstructured free time. The most visible consequence of the inadequately planned mixing of male and female correctional populations, however, was that 12 pregnancies occurred within 10 months of the transfer.

The Citizens Assembly, a bipartisan legislative agency, supported a study of the feasibility of sentencing program alternatives for women offenders. A report completed by the Administrative Office of the Illinois Courts in October 1987 found that over 80% of incarcerated women in the state are mothers and that 82.7% of them are single parent heads of their household. Forty-three percent of the women housed at Dwight are classified as minimum-security.

[The facility's] heightened security reflects almost a deep insecurity as to operation.

The Administrative Office of the Illinois Court's report examines several probation programs, including electronic home detention and intensive supervision probation, currently available to Illinois women. However, the report found that electronic monitoring, for example, was inappropriate for female offenders because pregnant offenders and offenders who are already mothers have high-risk health care needs and low-level vocational skills. These women require more supportive services than those provided by home detention.

In this context, the Citizen's Assembly's Citizen Council on Women recently concluded the following: the forced separation of women prisoners from their children causes long-lasting and severe psychological harm; county jails and work-release programs now being used to alleviate prison overcrowding merely complicate the parent-child reunification process; and community-based alternative sentencing programs are cost-effective and result in a lower level of recidivism than imprisonment.[8]

Maryland

The Maryland Correctional Institution for Women at Jessup, according to one observer, "seems one of the most restrictive prisons in the entire state, and yet it probably houses the least violent inmates. It is hard to define the women's prison because it has changed administrations so often, but its heightened security reflects almost a deep insecurity as to operation. Throughout the institution the accent seems to be on custody

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[7]Lindsay M. Hayes, et al., *The Female Offender in Delaware: Population Analysis and Assessment*, Alexandria, VA, National Center on Institutions and Alternatives, January 1989, p.18. This report is available from either Timothy J. Roach, Project Director, NCIA, 635 Slaters Lane, Suite G-100, Alexandria, VA 22314, 703/684-0373, or Kathy Mickle-Askin, Executive Assistant, Delaware Department of Corrections, 80 Monrovia Avenue, Smyrna, DE 19977, 302/736-5601.

[8]Information in this section was culled from these documents: The 1986 and 1987 annual reports of The Citizens Council on Women of Illinois' Citizen Assembly (available from Donna Grinther, Senior Research Associate, Citizens Assembly, 300 West Monroe, Springfield, IL 62706, 217/782-4546); and "Sentencing Alternatives for Illinois Female Offenders" by Thomas C. Stringer, Jr. (available from the Administrative Office of the Illinois Courts, Supreme Court Building, 413 West Monroe, Springfield, IL 62706, 217/524-6247).

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rather than rehabilitation and programs. There has been a drastic increase in security measures: more gates, more razor-wire fencing, and more guard towers. At times it seems there is invisible writing over the guard towers saying, "GO ELSEWHERE AND LEAVE US ALONE."[9]

Nevertheless, the General Assembly of Maryland passed a resolution in 1986 "to study the status of women convicted of crime in the State and the existing and potential opportunities for rehabilitation of women incarcerated in the Maryland penal system."

The Committee to Study Sentencing and Correctional Alternatives for Women Convicted of Crime was divided into subcommittees on alternatives to incarceration: health and mental health; educational and vocational training and economic independence; community resources and support; and a profile of women offenders.

The Committee found that imprisoned women differed significantly from women in community and alternative programs. The average female offender serving time in the community in Maryland is black, unmarried, between the ages of 23 and 35, a high school graduate (with some college education), as likely to be employed as unemployed, an alcohol or drug abuser, and a property offender. However, the average imprisoned woman in the state is a black, unmarried, 31-year old mother with a history of substance abuse, a documented history of mental health intervention, and less than twelve years of education. She was also probably unemployed, a multiple-offender, and residing with her family at the time of her offense.

Furthermore, an American Correctional Association-assisted survey completed in February 1988 for the Committee found that 43% of imprisoned women were victims of physical abuse, and 33% surveyed were victims of sexual abuse.

"When attempting to address what programs and services are best suited to addressing her needs," the Committee's report concluded, "it is important to remember that the adult female offender is probably an unmarried mother of minor children, living in an urban area, with a long-term substance abuse problem. She is functionally illiterate and employable and needs to earn more than minimum wage and have access to adequate child care and transportation. She needs to develop insight into her own behavior and improve her self-image, and she can benefit from vocational counseling prior to employment-related training."[10]

[9]These observations were made in December 10, 1987 testimony by Florence C. Welch to the Governor's Committee to Study Sentencing and Correctional Alternatives for Women Convicted of Crime.

Massachusetts

The Massachusetts Correctional Institution at Framingham (MCI-Framingham), which houses most of the state's pretrial and sentenced women prisoners, is grossly overcrowded (two to three times its design capacity). A 67-member Advisory Group on Female Offenders was convened several years ago to explore services for incarcerated women at MCI-Framingham.

The Advisory Group found that institutional services are frequently unconnected with prison- as well as community-based programs; that these institutional services fail to meet the substance abuse, health care, mental health treatment, educational, and employment training needs of imprisoned women in the state; and that alternatives to incarceration and more county jail beds are required to link women offenders with community services, and to reduce MCI-Framingham's pervasive overcrowding problem.

The Advisory Group recognized that overcrowding within the institution would have to be reduced before the impressive array of potential institutional program services could be successfully implemented. Unfortunately, the Group seems profoundly reliant on building more jail and prison cells for women to achieve a lower population. State plans currently call for more than 500 new beds statewide by 1993. Several administrative or nonincarcerative measures in the Group's report—an outstanding-warrant-clearing unit, for instance—promise to have some impact on MCI-Framingham's crowded condition. However, the Group failed to develop explicit plans for diverting or deinstitutionalizing enough women for valuable program services to be offered to those women who really require incarceration.[11]

[10]A copy of the final report of The Governor's Committee to Study Sentencing and Correctional Alternatives for Women Convicted of Crime can be obtained from Paul S. Hastman, Executive Director, Department of Public Safety and Correctional Services, Maryland Commission on Correctional Standards, 6776 Reisterstown Rd., Suite 303, Baltimore, MD 21215, 301/764-4265.

[11]Information in this section was taken from *Services for Women Offenders in Massachusetts*, the final report of the Advisory Group on Female Offenders, and from *Report on Female Offenders* (June 1987). Both reports are available from Amy Singer, Deputy Director for Criminal Justice, Executive Office of Human Services, One Ashburton Place, Room 1109, Boston, MA 02108, 617/727-7600.

The Group seems profoundly reliant on building more jail and prison cells for women.

Conclusion

Much of the information provided in these reports correlates with other studies of female offenders and imprisoned women. Nonetheless, with the exception of NCIA's analysis of Delaware's female prisoner population, none of these reports offered more than partial commitment to the deinstitutionalization of women prisoners. Moreover, except for the NCIA report, none of these reports directly challenged state plans for imprisoning more women.

Still, these reports offer a roadmap for identifying both the reasons why fewer women need be imprisoned and the obstacles which must be overcome in delineating and enacting a plan for reducing the number of women imprisoned in this country.

In Delaware, women prisoners are routinely overclassified. In Illinois, corrections officials have shown some resistance to instituting alternative correctional programs for women. In Maryland, while some firm directives are given toward making greater use of post-release community programs, too little specificity is applied toward identifying front-end diversions from the state's prison system. And, in Massachusetts, some progressive postures are weakened by far too much reliance on increasing the further institutionalization of women throughout the state.

In the end, NCIA's recommendation for the state of Delaware applies equally well to other states considering how to address recent increases in the use of imprisonment for women offenders.

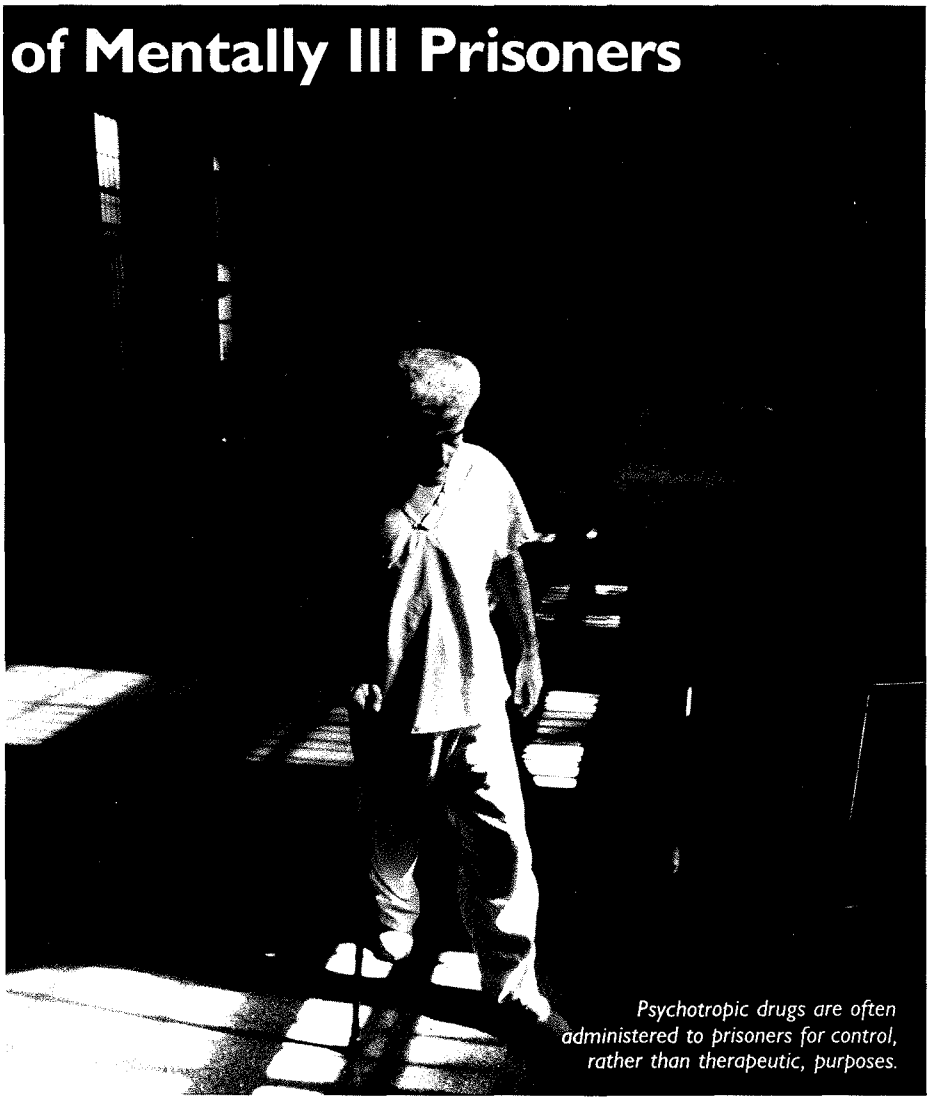
"We would strongly recommend that the state reconsider the cell expansion path it has chosen. It has been the premise of NCIA that cell space should be viewed as a precious commodity and reserved for only those who are a danger to the community, and/or have committed serious offenses. The inmate population analysis detailed within NCIA's study clearly reflects a profile contrary to the intended use of incarceration. It is NCIA's opinion that alternatives to incarceration, via increased residential beds and expanded community supervision options, can be safely and effectively implemented for a significant percentage of Delaware's current women's prison population." ■

Forced Drugging of Mentally Ill Prisoners

Mark Lopez

Conservative estimates place the number of prisoners suffering from acute mental illness at 4-5% of the prison population nationwide. Their numbers have increased steadily in recent years because of the growth of the deinstitutionalization movement, with no corresponding growth in community mental health resources. In those prison systems where attempts are made to provide treatment for these prisoners, the typical course of treatment calls for the use of large doses of psychotropic drugs.

While it is generally agreed that these drugs can provide great benefits to persons suffering from mental illness, they also pose a serious risk of severe and, perhaps, permanent side effects. In addition, they are often administered for control, rather than for therapeutic reasons.[1] In light of these risks, and the literally "mind-altering" effects of the drugs, a prisoner's legitimate right to refuse drug treatment should be of primary importance. In most cases, however, prisoners have no choice in the matter, and if they refuse, they are physically restrained and given intramuscular injections of the drug.



Psychotropic drugs are often administered to prisoners for control, rather than therapeutic, purposes.

Tony O'Brien, Frost Publishing Group

... conjures up thoughts of Stanley Kubrick's A Clockwork Orange *or Ken Kesey's* One Flew Over the Cuckoo's Nest ...

If this picture conjures up thoughts of Stanley Kubrick's *A Clockwork Orange* or Ken Kesey's *One Flew Over the Cuckoo's Nest*, the comparison does not miss the mark by much. When the government administers "mind-altering" psychotropic drugs—or chemical restraints, as they are commonly referred to—against a person's will to control behavior, basic constitutional rights to autonomy and human dignity are implicated. To assure that those rights are not transgressed, absent a life-threatening emergency, psychotropic drugs should not be constitutionally administered against the will of an individual, unless that individual has been found to be judicially incompetent to make treatment decisions.[2]

Psychotropic Drugs Cause Serious and Potentially Debilitating Physical Side Effects

In urging that a patient's competent choice to refuse psychotropic drugs must be respected, this writer intends no denigration of these medications. When effective, psychotropic drugs reduce the delusions, hallucinations, and thought disorders associated with the most severe psychiatric illnesses—the psychoses.[3] For many patients, these drugs provide significant benefits and are considered the treatment of choice. Courts have consistently recognized that "[p]sychotropic drugs are considered more effective than any other form of treatment in reducing thought disorder in schizophrenics."[4]

Recognition of these potential benefits should not, however, obscure the risks of debilitating side effects posed by psychotropic drugs. They cause a wide range of unwanted physical and mental effects that can be grave, even fatal. Because side effects occur in a high percentage of medicated patients, and serious side effects occur in significant numbers, their use is generally recognized as "high-risk treatment."[5] Medical

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Mark Lopez is a staff attorney with the National Prison Project.

[1]When National Prison Project staff investigated the death of a woman prisoner at the Georgia Women's Prison several years ago, we found that 44% of the entire prison population were being given psychotropic drugs, most of them involuntarily.

[2]Much of the analysis that follows was borrowed from the *Amicus Curiae* brief of the American Psychological Association, submitted in *U.S. v. Charters*, 829 F.2d 479 (4th Cir. 1987) (decision on rehearing *en banc*, pending).

[3]See *Rivers v. Katz*, 67 N.Y.2d 485, 495 N.E.2d 337, 339 n.1 (1986) (medical usefulness "stems from their ability to influence thought patterns so as to eliminate psychotic symptoms").

[4]*In re Boyd*, 403 A.2d 744, 752, n.13 (D.C.C.A. 1979). *See also, e.g., Davis v. Hubbard*, 506 F.Supp. 915, 927 (N.D. Ohio 1980).

[5]*In re Guardianship of Richard Roe, III*, 421 N.E.2d 40, 54 (Mass. 1981). *See also, Bee v. Greaves*, 744 F.2d 1387, 1390-1391 (10th Cir. 1984), *cert. denied*, 469 U.S. 1214 (1985); *Jarvis v. Levine*, 418 N.W.2d 139 (Minn. S.Ct. 1988). *See also, Mills v.*

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treatises and bulletins—including those of the American Psychiatric Association—routinely caution mental health professionals to take special care to administer these drugs only when necessary and in the minimum dosage necessary.[6]

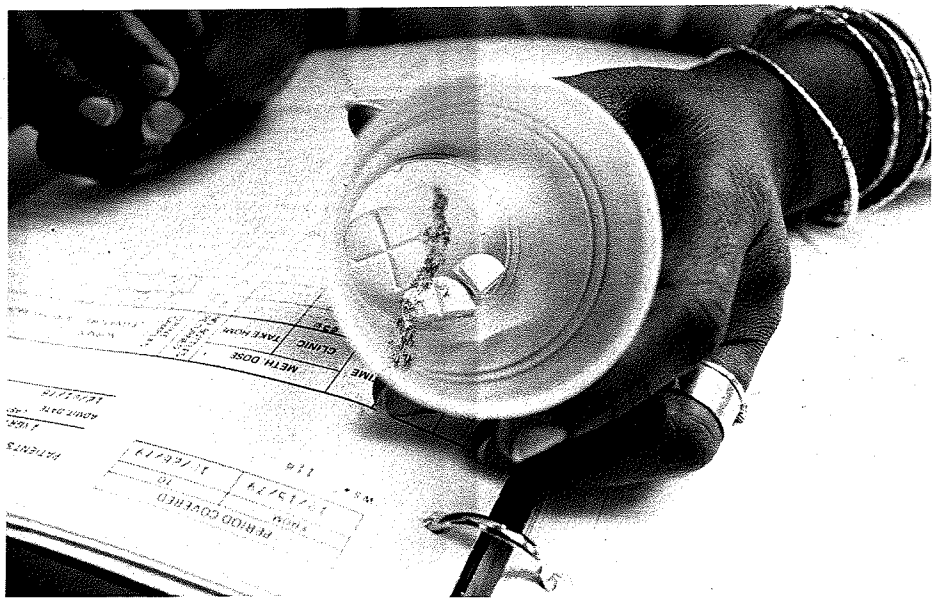
U.S. v. Charters,[7] contains the most thorough examination of the issue. The court correctly found several side effects caused by psychotropic drugs, including extrapyramidal symptoms such as: *parkinsonian syndrome*, which is characterized by a mask-like face, drooping, stiffness and rigidity, shuffling gate, and tremors; *akathisia*, which is characterized by strong subjective feelings of distress and an often irresistible need to be in constant motion; and *dystonic* reactions, which include muscle spasms, irregular flexing, writhing or grimacing movements, and protrusion of the tongue.[8]

In *In re Boyd*, one of the most prominent state court decisions, the D.C. Court of Appeals also noted nonmuscular side effects that regularly result from psychotropic drugs, including drowsiness, dizziness, blurred vision, dry mouth and throat, "torn up" stomach, low blood pressure, skin rashes, constipation, and loss of sexual desire.[9]

Many of the physical side effects described above are both frightening and critical. But the most debilitating effect linked to psychotropic drugs is *tardive dyskinesia*. The New York Court of Appeals in *Rivers v. Katz* described this condition as "potentially devastating,"[10] and many other courts have recognized its potential severity.[11] In *People v. Medina* the Supreme Court of Colorado summarized the effects of tardive dyskinesia:

> *This condition produces involuntary movements of the tongue, lips, and jaw, which may include continual chewing and lip smacking motions and facial contortions. It may also be accompanied by involuntary movement of the fingers, hands, legs, back, neck, and pelvic area. In its most severe form, it may interfere with all motor activity, making speech, swallowing, and breathing extremely difficult. Tardive dyskinesia is of special concern for several reasons. First, its symptoms often do not appear until late in the course of treatment and sometimes do not appear until after treatment is discontinued. Second, there is no known cure for the condition. Third, it is impossible to predict who will become a victim, aside from the tendency of the condition to affect patients on long-term high dosages of antipsychotic medications. Finally, the condition is fairly widespread, as studies have indicated that the condition occurs in 10-40% of patients receiving long-term, high-dosage treatment.*[12]

Unlike some of the other, milder side effects described above, which typically subside when psychotropic drugs are discontinued, tardive dyskinesia often persists long after treatment, and can be irreversible. It cannot be predicted with any certainty at the outset whether a particular patient will benefit from psychotropic drugs or experience adverse side effects. In short, the only way to avoid tardive dyskinesia is to avoid using psychotropic drugs.



Bill Powers, Frost Publishing Group

Many psychotropic drugs cause serious side effects, some of which are irreversible.

For many patients, these drugs provide significant benefits and are considered the treatment of choice.

Psychotropic Drugs Can Severely Affect Mental Processes

The court in *U.S. v. Charters* correctly found that these drugs are also "mind-altering," with "the potential to allow the government to alter or control thinking and thereby destroy the independence of thought and speech so crucial to a free society."[13] As the Supreme Judicial Court of Massachusetts observed, psychotropic drugs have a "profound effect . . . on the thought process of an individual."[14] While these drugs are effective in ameliorating hallucinations and delusions, far from uniformly enhancing the mentally ill person's ability to concentrate and communicate, psychotropic drugs often diminish these abilities.

Psychotropic drugs can encourage docility and diminish a patient's ability and inclination to interact with environmental stimuli. The opinion in *Charters* correctly identified precisely these mental effects in assessing the potential harms of psychotropic drugs.[15] Recognition of these mental effects has also consistently led other courts to conclude that psychotropic drugs implicate First Amendment interests by intruding upon a patient's ability to form and communicate ideas.[16]

Furthermore, as the *Charters* court correctly observed, the issue of forced

Rogers, 457 U.S. 291, 293 n.1 (1982); *Rennie v. Klein*, 653 F.2d 836, 843 and n.8 (3rd Cir. 1981) (*en banc*); *Rogers v. Okin*, 634 F.2d 650, 653 and n.1 (1st Cir. 1980), *vacated sub nom. Mills v. Rogers*, 457 U.S. 291 (1982); *Davis v. Hubbard*, 506 F.Supp. 915, 927-29 (N.D. Ohio 1980); *People v. Medina*, 705 P.2d at 969-970, n.4; and *Opinion of the Justices*, 465 A.2d 484, 488 (N.H. 1983). *See Scott v. Plante*, 532 F.2d 939, 945 n.8 (3rd Cir. 1976) (describing side effects).

[6]*See, e.g., Tardive Dyskinesia*, American Psychiatric Association Task Force #18.

[7]*U.S. v. Charters*, 829 F.2d 479 (4th Cir. 1987) (decision on rehearing *en banc*, pending).

[8]829 F.2d at 483 n.2. *See also, Mills v. Rogers*, 457 U.S. 291, 293 n.1 (1982); *Bee v. Greaves*, 744 F.2d at 1390-1391; *Davis v. Hubbard*, 506 F.Supp. 915 (N.D. Ohio 1980); *Rivers v. Katz*, 495 N.E. at 339 n.1; *In re Boyd*, 403 A.2d 744 (D.C.C.A. 1979); *People v. Medina*, 705 F.2d 961, 968 n.3 (Colo. 1985) (*en banc*).

[9]403 A.2d 752 n.13.

[10]495 N.E.2d at 339 n.1.

[11]*See, e.g., U.S. v. Charters*, 829 F.2d at 483 and n.2; *In re Boyd*, 403 A.2d at 752 n.13.

[12]705 P.2d at 968 n.3 (emphasis added) (citations omitted).

[13]829 F.2d at 492, citing *Bee v. Greaves*, 744 F.2d at 1394.

[14]*In re Guardianship of Richard Roe, III*, 421 N.E. 40, 53 (Mass. 1981).

[15]829 F.2d at 483 n.2, 489.

[16]*E.g., Bee v. Greaves*, 744 F.2d at 1394; *Davis v. Hubbard*, 506 F.Supp. at 927-929.

medication will arise not only in cases of patients who are profoundly disturbed in all aspects of mental functioning. It will also arise in cases of patients who may be delusional in some aspects but mentally sound in others,[17] and patients who are functional but recovering from short-term emergency treatment for acute psychosis. In such cases, forced administration of psychotropic drugs precludes a patient's ability to opt for preservation of the "normal" aspects of mental functioning by foregoing the medication.

A Prisoners' Constitutional Right to Refuse Psychotropic Drugs

The Supreme Court has repeatedly held that "[a]mong the historic liberties protected by the Due Process Clause is the 'right to be free from. . . . unjustified intrusions on personal security.' "[18] The individual's firmly embedded common law "right to determine what shall be done with his own body,"[19] is without question one of the "personal rights that can be deemed fundamental or implicit in the concept of ordered liberty" and is therefore protected by the Due Process Clause.[20] This right to personal security and bodily integrity, the Supreme Court has made clear, encompasses a fundamental interest "in independence in making certain kinds of important decisions" about what will be done to one's body and mind.[21]

Because the forced administration of psychotropic drugs intrudes upon not only these interests in personal security and bodily integrity, but also upon the sanctity of the mental process, an individual's right to refuse psychotropic drugs is protected by the United States Constitution.

The Supreme Court has never squarely decided what substantive and procedural protections the Constitution affords a mentally ill prisoner, patient, or other person who refuses psychotropic medication. Nevertheless, every lower court that has considered the question in the past decade has concluded that the right to refuse psychotropic drugs is a substantive liberty interest protected by the federal Constitution—although courts have differed in demarking where the right must yield to a compelling government interest. While most of these decisions have arisen in the context of a mental hospital, a few have involved prisoners, mostly pre-trial detainees.[22]

Some courts have based their conclusion on the constitutional right to form and express ideas, others on the constitutional right to privacy, to personal integrity, to personal security, or to substantive due process. That these courts have not agreed on a single rationale for the right is not an argument against recognition of the right. To the contrary, the breadth of constitutionally protected interests which these courts have cited demonstrates that forcible administration of psychotropic drugs implicates a panoply of fundamental liberty interests. Regardless of the specific source of the right, the mentally ill, whether in prisons or hospitals, have a constitutionally protected right to refuse psychotropic drugs that must be respected by the government.[23]

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[17] 829 F.2d at 489.
[18] *Vitek v. Jones*, 445 U.S. 480, 492 (1980) (quoting *Ingraham v. Wright*, 430 U.S. 651, 673 (1977)).
[19] *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125, 129, 105 N.E. 92 (1914) (Cardozo, J.).
[20] *See Palko v. Connecticut*, 302 U.S. 319, 325 (1937) (Cardozo, J.) (internal quotation omitted).
[21] *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977).
[22] *U.S. v. Charters*, 829 F.2d 479 (4th Cir. 1987) (pre-trial detainees); *Bee v. Greaves*, 744 F.2d 1387 (10th Cir. 1984), *cert. denied*, 105 S.Ct. 1187 (1985) (pre-trial detainees have a constitutional right to refuse psychotropic drugs); *Osgood v. District of Columbia*, 567 F.Supp. 1026 (D.D.C. 1983) (former mental patient has a constitutional right, in jail, to refuse psychotropic drugs).
[23] *See Rogers v. Okin*, 478 F.Supp. 1342 (D. Mass. 1979); *Rogers v. Okin*, 634 F.2d 650 (1st Cir. 1980); and *Rogers v. Okin*, 738 F.2d 1 (1st Cir. 1984) (on remand). *See Winters v. Miller*, 446 F.2d 65 (2nd Cir.), *cert. denied*, 404 U.S. 985 (1971); *Davis v. Hubbard*, 506 F.Supp. 915 (N.D. Ohio 1980); *Rennie v. Klein*, 653 F.2d 836 (3rd Cir. 1981) (*en banc*), *cert. granted and judgment vacated and remanded*, 458 U.S. 1119 (1982), *on remand*, 720 F.2d 266 (3rd Cir. 1983); *In re K.K.B.*, 609 P.2d 747 (Okla. 1980); *Johnson v. Silvers*, 742 F.2d 823 (4th Cir. 1984); and *Rogers v. Commissioner of Mental Health*, 390 Mass. 489, 458 N.E.2d 308 (1983). *See also, Project Release v. Prevost*, 722 F.2d 960 (2nd Cir. 1983), and *Anderson v. Arizona*, 663 P.2d 570 (Ct. App. Ariz. 1982), both of which hold that patients have a right to refuse psychotropic drugs and appear to ground that right in both the federal Constitution and state law. *And see, Knecht v. Gillman*, 488 F.2d 1136 (8th Cir. 1973) (mental patients have a constitutional right to refuse the drug apomorphine); *Scott v. Plante*, 532 F.2d 939 (3rd Cir. 1976) (complaint alleging forced administration of psychotropic drugs states a claim under the federal Constitution); and *Mackey v Procunier*, 477 F.2d 877 (9th Cir. 1973) (complaint alleging forcible administration of the drug succinycholine to a prisoner in a state mental facility states a claim under the federal Constitution). Furthermore, although sympathetic to a federal constitutional right, many other courts have found it unnecessary to reach that question and have ruled, instead, that involuntarily hospitalized mental patients have a common law right, a state statutory right, or a state constitutional right, to refuse psychotropic drugs. *E.g., Rivers v. Katz*, 67 N.Y.2d 485, 495 N.E.2d 337 (1986); *Goedecke v. State Department of Institutions*, 603 P.2d 123 (Colo. 1979); *People v. Medina*, 705 P.2d 961 (Colo. 1985) (*en banc*); *Opinion of the Justices*, 465 A.2d 484 (N.H. 1983).

Sweden Pushes for Better Conditions in the Pen

Mark Lopez' article on psychotropic drugs in this issue of the *NPP JOURNAL*, and a recently released NPP publication entitled "Status Report: State Prisons and the Courts," underscore two problems in United States' prisons: forced drugging and overcrowding.

Sweden recently enacted legislation which outlaws cramped cages and forbids the use of drugs except to treat disease. Both these measures sailed through the Swedish Parliament unopposed.

What is this—a new prisoners' rights law? Has the Supreme Court of Sweden, unlike our Supreme Court, issued a landmark decision outlawing overcrowding in prisons and jails? (See, *Rhodes v. Chapman*).

Actually, the Swedish government long ago prohibited the forced drugging of prisoners and guaranteed that prisoners would not live in overcrowded conditions.

The new arena for these rights is none other than the barnyard: cattle, pigs and chickens have been freed from the restrictions of intensive, or factory-farming, in which animals are kept in crowded conditions and are administered hormones and antibiotics.

Pigs can no longer be tethered and must be granted separate bedding and feeding places. Cattle have been given grazing rights under the new law. Chickens must be liberated from their small cages.

The act declares that "all slaughtering must be done as humanely as possible."

Astrid Lindgren, 81-year old creator of Pippi Longstocking, the children's book character, is the force behind Sweden's animal rights movement. She has written a series of satirical allegories in leading newspapers in Stockholm underscoring the plight of farm animals. Her stories are grown-up versions of children's fairy tales.

Animal rights activists hope that the rest of the world will follow the example set in Sweden. "People have become sensitive to pig tethering first in Sweden," said Pascal Phelan, president of Master Pork Packers in Ireland, "but it's going to come everywhere, believe me." ■

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Of course, recognition of a prisoner's right to refuse treatment with psychotropic drugs does not mean that right is absolute. As the Supreme Court made clear in *Youngberg v. Romeo,*[24] a case involving the use of physical as opposed to chemical restraints, to determine the appropriate scope of this right requires a weighing of "the individual's interest in liberty against the State's asserted reasons for restraining individual liberty."[25] In *Romeo*, the Court held that a profoundly mentally retarded patient in a state hospital had an individual liberty interest in safe conditions and freedom from unnecessary restraint. However, this interest, the Court stated, could be adequately protected by a legal standard requiring that "professional judgment was in fact exercised" in deciding upon the extent of restraint imposed or of training given.[26]

While *Romeo* has provided some guidance in delineating the scope of the right to refuse psychotropic medication, most courts have held that, absent an emergency, a competent prisoner's or patient's decision to refuse the medication should be respected, even if that conclusion differs from the one recommended by the treating physician.[27] This conclusion should not come as a surprise, given the severity of the potential intrusion and the difficulty of the calculus respecting the advisability of medication with psychotropic drugs. The government's failure to respect a prisoner's competent decision to refuse these drugs threatens fundamental principles of personal security and individual dignity. The extreme difficulty of predicting when administration of the drugs will cause adverse side effects exacerbates the threat to fundamental interests; government's power to act must be most restricted where, as in this case, the decision raises the possibility of serious risks to individual health and has no clear and predictable outcome. Under these circumstances, the forced administration of psychotropic drugs seriously infringes on the constitutional rights of prisoners who are being treated as mentally ill.

Counterbalancing the state's interest in administering such medication in emergency situations, the courts have found that state officials have a legitimate interest in forcibly medicating prisoners or patients who are dangerous to themselves or others, or who pose an immediate and substantial threat of becoming violent. Under these circumstances, the state's police power interest in preserving order and protecting patients and staff within the institution will be sufficient to override the patient's refusal of psychotropic drugs if—but only if—other less intrusive approaches would be ineffective in preventing violent behavior, and only for a short duration pending a court competency hearing.[28] In the absence of such an emergency or a finding of incompetency, prison officials may not unilaterally administer psychotropics to a prisoner over his objection.[29]

Although prison officials have an interest in the safe and orderly administration of their prisons, this interest has never been held to be sufficient in itself to override a *competent* individual's right to accept or refuse medically indicated treatment. Were the medical treatment at issue here an intrusive or risky procedure such as bypass surgery, a mastectomy, or dialysis, it is inconceivable that the Constitution would be held to permit the federal government to force a competent adult to undergo such treatment against his or her will. There is simply no principled distinction between the chemical invasion of drug therapy and the mechanical invasion of surgery. Because psychotropic drugs are similarly intrusive and pose the risk of similarly unwanted side effects, a competent decision to refuse these drugs must likewise receive constitutional protection. ■

Author's note: Since the completion of this article, the panel opinion in U.S. v. Charters, supra, *has been reversed by the Fourth Circuit Court of Appeals sitting* en banc. See, U.S. v. Charters, *863 F.2d 302 (4th Cir. 1988). Purporting to follow the standard announced in* Youngberg v. Romeo, *457 U.S. 307 (1982), the full court held that the initial decision on the non-consensual use of anti-psychotic drugs may be left to prison doctors. And in* Washington v. Harper, *43 CrL 2285 (7/7/88), where the Washington Supreme Court held that a state prisoner has a due process right to a judicial hearing before being administered anti-psychotic drugs against his will, the U.S. Supreme Court granted* certiorari *earlier this year to determine whether judicial intervention is a constitutional prerequisite. 109 S.Ct.—(1989).*

[24]457 U.S. 307 (1982).
[25]*Id.* at 320.
[26]*Id.* at 321-324.
[27]See e.g., *U.S. v. Charters*, 829 F.2d at 495-497; *Bee v. Greaves*, 744 F.2d 1387; *In re the Mental Commitment of M.P.*, 510 N.E.2d 645 (S.Ct. Ind. 1987).
[28]*U.S. v. Charters*, 829 F.2d 479, and cases cited therein.
[29]*Id.*

Political Fallout Means Fewer Furloughs

Rosemary Barberet

On furlough from a Massachusetts prison in 1986, convicted murderer Willie Horton raped a Maryland woman and attacked her fiancé. This one incident proved to be extremely damaging to Governor Michael Dukakis' campaign for the presidency.

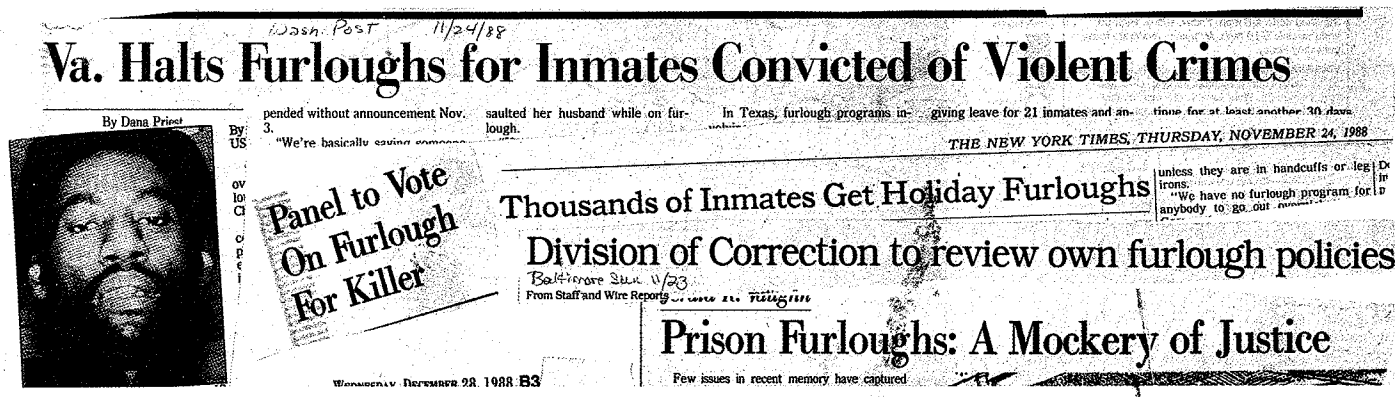
The "Horton incident" provided a convenient setting from which to launch an uninformed and divisive debate geared to stimulate fear and its companion—racism—among the public. It was a difficult tactic to counteract—partly because defending rehabilitative programs for prisoners is no longer fashionable, and partly because racism in the 1980s has become more subtle. Rather than commending a rehabilitative furlough program that posed little threat to public safety, Dukakis and his supporters were eager to erase the whole incident or blame it on a previous Republican administration.

Rosemary Barberet, an NPP volunteer, is a doctoral student in criminology at the University of Maryland and a former research analyst for the Massachusetts Parole Board.

The facts about furlough programs have failed to surface in the mass media.

Nationwide reaction to Horton's act appears to have jeopardized the privileges and programs of prisoners and their families. What long-term effect will the Horton incident have on corrections policy generally, and on community reintegration programs specifically?

According to "The Lessons of Willie Horton: Thinking About Crime and Punishment for the 1990s," a report issued in February 1989, by The Sentencing Project, a nonprofit organization based in Washington, D.C., Bush's success in using the Horton incident was due to several factors: cleverly simplified "sound bites" produced by the Bush campaign; Dukakis' inability to rebut the charges; a simplification of the issue portraying Bush as "for victims" and Dukakis as "for criminals"; the use of Horton as a dramatic symbol for a complex problem; and the public's fear of crime and lack of



Wash. Post 11/24/88

Va. Halts Furloughs for Inmates Convicted of Violent Crimes

By Dana Priest

pended without announcement Nov. 3.

"We're basically saying someone

saulted her husband while on furlough.

In Texas, furlough programs in

giving leave for 21 inmates and an

time for at least another 30 days.

THE NEW YORK TIMES, THURSDAY, NOVEMBER 24, 1988

Panel to Vote On Furlough For Killer

Thousands of Inmates Get Holiday Furloughs

unless they are in handcuffs or leg irons.

"We have no furlough program for anybody to go out

Division of Correction to review own furlough policies

Baltimore Sun 11/23

From Staff and Wire Reports

WEDNESDAY, DECEMBER 28, 1988 B3

Prison Furloughs: A Mockery of Justice

Few issues in recent memory have captured

understanding about criminal justice.

The Facts: The Contact Center's Comprehensive Survey

Defenders of the reintegrative and rehabilitative benefit of furloughs may find themselves strange bedfellows of supporters of furloughs because they can serve to control prisoners. Yet, the "pro-furlough" view has received little attention. Even the facts about furlough programs have failed to surface in the mass media.

The Contact Center in Nebraska conducted a survey of furlough practices around the country from May to September of 1988. Published in the August and September-October issues of their newsletter *Corrections Compendium*, the survey found "widespread, successful and relatively problem free [use of furloughs]." All states, the Federal Bureau of Prisons (BOP), and the District of Columbia have some form of temporary release program for prisoners. About 200,000 furloughs were granted in 1987 for more than 53,000 inmates. All but three states reported success rates over 90%. Furthermore, almost every system considered furloughs to be helpful for both reintegrative and institutional control purposes.

Thirty-six states, the Federal Bureau of Prisons and the District of Columbia allow furloughs for prisoners serving life sentences. Six of these systems rarely grant furloughs for lifers, even though furloughs for lifers appear generally successful, as they are for other inmates. Two states which allowed furloughs for lifers without parole in 1987—Massachusetts and Arizona—have since rescinded that policy.

At least six states—Texas, Virginia, Maryland, Virginia, Louisiana and Michigan—are considering revision of their furlough policies. Says Hardy Rauch of the American Correctional Association, "This was bound to happen. If you see a fire in your neighbor's house, you are going to be darn sure that your fire alarm is in working condition."

Texas officials admitted that they took a second look at their program as a result of the presidential election campaign. Forty-three thousand furloughs have been granted in Texas since 1977. Although there had been only 300 escapes in 11 years, the Texas Department of Corrections moved last November to tighten the program. Furlough candidates must now be within six months of their parole eligibility, and those convicted of multiple drug offenses, capital murder, aggravated kidnapping, aggravated sexual assault, aggravated robbery and any offense involving a deadly weapon are no longer eligible for furlough.

The discretion allotted to the Patuxent Institution in Maryland in deciding on furloughs and paroles for its criminally violent population came under fire last year. Public outcry centered on furloughs given to Robert Angell, sentenced in 1976 to three consecutive life terms for murdering two police officers and a teenager.

> *"How do you prepare the offender for coming back out into society? That's the correctional dilemma."*

In Virginia, most violent offenders have not been granted furloughs since November 1988, even though they may be eligible for them under department policy; inmate highway work crews have also been curtailed. "What do you replace the furloughs with?," deputy director of corrections Edward Morris told the Boston *Globe* in February.[1] "How do you prepare the offender for coming back out into society? That's the correctional dilemma. It's the public safety short-term versus the public safety long-term."

In Mississippi, where nonemergency furloughs are allowed only around the Christmas holidays, the names of 350 furloughed inmates were published in the Jackson *Clarion Ledger*.

In Louisiana, all furloughs have been on hold since August 1988, after an inmate assigned to the governor's mansion killed his girlfriend on furlough.

Federal Bureau of Prisons spokeswoman Kathryn Johnson foresees no change in the Bureau's furlough system.

Ironically, the Massachusetts program has been one of the most successful. Dr. Daniel LeClair, director of research for the Massachusetts Department of Correction, reports that from 1972 to 1987, 121,713 furloughs were granted to 10,835 prisoners. Of these, 428 resulted in escape and 219 returned two or more hours late. This gives the program a 99.5% success rate. Research shows that inmates who receive prison furloughs have lower recidivism rates than those who do not, even after controlling for relevant risk factors.

The statistics for first degree lifers in Massachusetts show a 98% success rate. Nonetheless, furloughs for first degree lifers were suspended in June 1987.

Chris Dodson: The Denial of Furloughs Punishes the Family

For Chris Dodson, family member of Lewis Dickinson, a first degree lifer at Norfolk prison in Massachusetts, the Horton incident had grave consequences for her family and her future—yet no newspaper covered her story.

When furloughs were first suspended for first degree lifers in Massachusetts in June 1987, the year following Horton's infamous furlough, prisoners and their families were told it was temporary, in order to conduct "psychological reviews." Prisoners were told that the furlough program was over. Then at 2:00 a.m. one morning in December 1987, all first degree lifers in minimum security were moved to higher security settings. At that time, Lewis Dickinson had served 14 years for first degree murder, and had been going on furloughs for three years.

The change from a hard-earned minimum security placement to a higher se-

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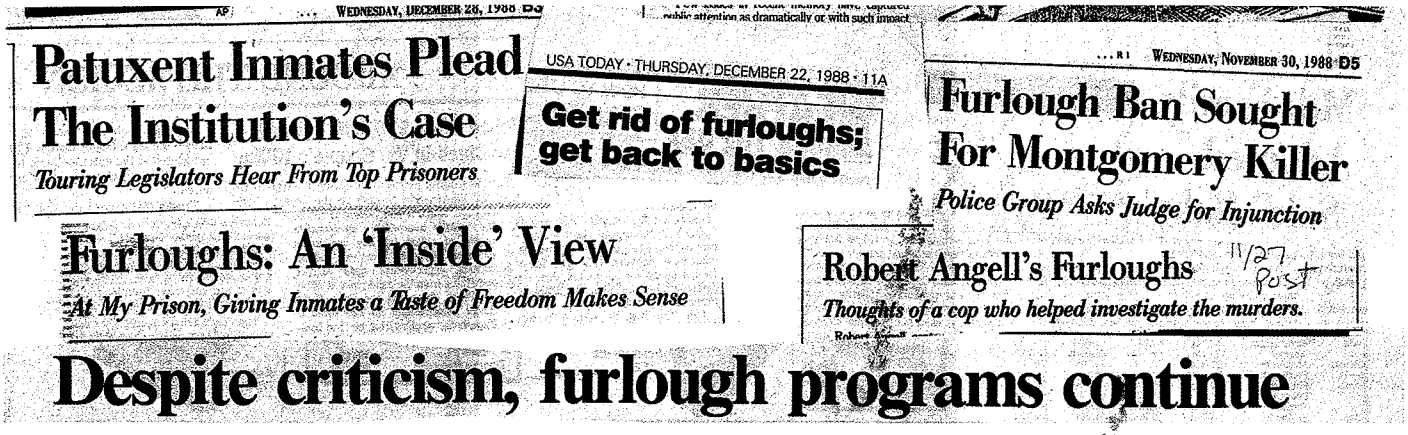
[1] Pamela Reynolds, "Furlough Programs Still Reeling From 1988," *The Boston Globe*, (February 16, 1988).



Despite criticism, furlough programs continue

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curity one—especially one that appeared to be for purely political reasons—was devastating for both prisoners and their families. Dickinson's young children refused to visit him at the medium security facility because they were intimidated by the clearly prison-like atmosphere and the stricter searches. Dodson has seen other relationships dissolve and other families suffer.

What Dickinson misses most, of all his privileges, is his work release and the furloughs that enabled him to attend events at the state mental hospital where he worked. That is where he and Dodson, an administrator, first met. "That's what really kept him going, really made him feel like a contributing member of society," says Dodson. "In the mental hospital, Lewis helped run treatment groups for chronic schizophrenics. He and others umpired Little League games."

Robert Kessler, superintendent of the Acton Schools, where five lifers held clerical and maintenance positions, protested to the governor when his workers were recalled. "He wanted his lifers back," said Dodson. "He felt they were honest, trustworthy employees who did not deserve to be pulled from their jobs."

Dickinson and Dodson hope that he will be granted a sentence commutation to second degree murder, which would make him eligible for parole. Although chances of that are slim, they cling to the hope. Furloughs had been one way to prove that Dickinson was ready for life on the outside again. "I never understood what hope was before I went through this; it's as necessary to human beings as air," reflected Dodson.

Lifers, ironically, are often the "best" inmates. Key to understanding the reason for this, according to Dodson, is understanding institutionalization. "It's a psychological change that is hard to imagine. You build up stakes in conformity." Dodson, who has been asked to teach a course on "Prisoners and Families" at the University of Massachusetts at Boston, is frustrated by the high public expectations regarding reintegration.

"We thought that a 98% success rate for the furlough program was good. We were told it was not good enough."

Linda Thurston: It Looks Like Prisoners Won't Reintegrate Gradually Anymore

Linda Thurston is the coordinator of the American Friends Service Committee's Criminal Justice Program, based in Roxbury, Massachusetts. She was familiar with the Horton incident and its aftermath through her network of prisoners and their families, and her work with various inmate committees in the Massachusetts prisons.

Thurston works on the Massachusetts Commissioner of Correction's Advisory Group on Long Term Offenders, established to deal precisely with the aftermath of the Horton drama.

Thurston is most concerned that the reaction to the Horton incident is the beginning of a trend. "It used to be, you went into maximum, gradually worked your way out, so you didn't get paroled from behind a wall. You had furloughs, you had work release. Now, it looks like there's more building of maximum security facilities than of minimums. It looks like every prison is turning into a maximum security prison. It looks like prisoners won't reintegrate gradually anymore."

Norma Gluckstern: The Reaction to the Horton Incident Has Gone Beyond Punishment

The Patuxent Institution in Jessup, Maryland recently came under fire when the public learned of Robert Angell's furloughs. Norma Gluckstern, a psychologist and director of Patuxent, took a strong stance defending the leave system and its rehabilitative value. Her position changed, however, under public and political pressure. No less convinced that furloughs are essential to Patuxent's unique system, Gluckstern told the *NPP JOURNAL*:

"It's clear I believe in rehabilitation. But my role now is to show you the consequences of your act. You, the citizens, the legislature, make your decision. I'm free then to make a decision as to whether this is a system I want to be part of. We did what we were supposed to do, what we were charged to do."

Furloughs are an important carrot in Patuxent's four-level system for violent offenders. Patuxent offers a semi-behavior modification approach where responsibility and privileges increase as the offender's behavior and response to therapy improve. It has its own parole board and parole officers. Prisoners serving life sentences, if selected for Patuxent, can conceivably be released earlier than if they served their terms at other Maryland correctional facilities.

Stressing that furloughs are most vital at Patuxent for their reintegrative function, as a prison administrator Gluckstern recognizes their strength as a control mechanism. "If an inmate doesn't have any hope, then why bother behaving himself in the institution? A furlough is something to look forward to. If you deny all leaves and furloughs you are going to be setting up correctional facilities that will be very difficult to manage or maintain. For a correctional manager, furloughs are a way of maintaining security and custody within a correctional institution."

Gluckstern has predicted that the 1989 Maryland legislative session will limit Patuxent's discretion. She anticipates that criminal justice decision-making will become more and more political, but hopes that no "radical surgery" will be done on prison programs.

Not one to underestimate the impact of the Horton symbol, she says, "The Willie Horton incident allowed American society to express this incredible fear they have about crime in general. It just fueled that kind of fear. The anger that you hear—it goes beyond punishment. We have had incidents like this before, yet there has been no tremendous outcry like this one, absolutely nothing like this."

Gluckstern says the issue boils down to values. "To what degree is the community morally or ethically committed to supporting or helping some of these people? It's the Judeo-Christian ethic. If we don't want to take any risks, we can lock people up forever, if that's the kind of society we are." ■

Editor's note: Gluckstern's predictions were correct. The 1989 legislature narrowed the eligibility requirements for entering the program, and tightened the criteria for release. The review board has been restructured to give it a more victim's rights voice. Gluckstern and the chief psychologist have since resigned.

For further information, see:

1. "Furloughs," Parts I and II and "Furloughs for Lifers," *Corrections Compendium*, Contact Center, Inc., P.O. Box 81826, Lincoln, NE 68501 (surveys reported in the August and September-October issues).
2. "The Lessons of Willie Horton: Thinking About Crime and Punishment for the 1990s," The Sentencing Project, Washington, D.C., February 1989.
3. Patuxent Institute, descriptive brochure. Available from Fran Kessler, Patuxent Institution, P.O. Box 700, Jessup, MD 20794, 301/799-3400.

FOR THE RECORD

■ Representatives of victim-offender groups have established the U.S. Association for Victim-Offender Mediation (USAVOM), an organization committed to serving a broad and inclusive network of victim-offender reconciliation and mediation groups operated by both private and public agencies.

The organization aims to provide information about victim-offender programs to the general public and to en-

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AIDS UPDATE

Judy Greenspan

A brief look at the history of AIDS in prison shows a series of struggles and conflicts.

■ December 1987: Prisoners set up support groups to organize against mistreatment of prisoners with AIDS in the federal prison system.

■ May 1988: In New York State, prisoners report that their efforts to establish a prisoner-run AIDS education program has been blocked by corrections officials.

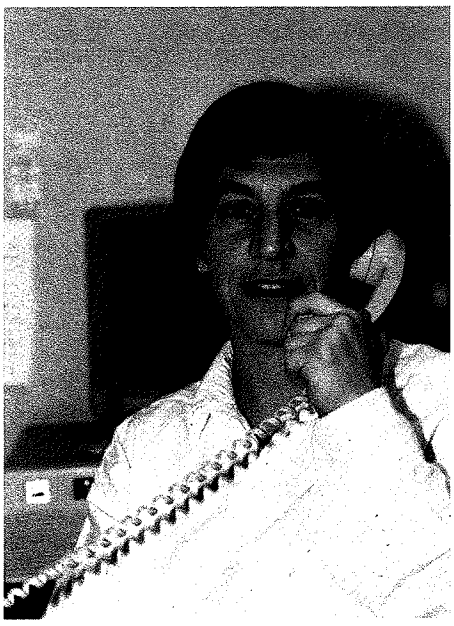
■ June 1988: Rhode Island passes AIDS legislation providing for the mandatory HIV testing of all state prisoners.

■ September 1988: Prisoners' Legal Services of New York files suit against the New York State Commission of Correction to protest the designation of a special dorm for prisoners with AIDS at the Greene Correctional Facility in Coxsackie.

■ October 1988: Congress passes national AIDS Omnibus Bill which mandates HIV testing of all people convicted of sex- or drug-related crimes.

■ October 1988: Over 2,000 people with AIDS and their supporters shut down the Food and Drug Administration (FDA), demanding immediate release of all experimental AIDS drugs and an expansion of drug programs. ACT-UP, a national organization of AIDS activists, calls for an end to mandatory prisoner testing for AIDS.

In recent months, legislators have passed laws, prisoners' rights activists have filed lawsuits, prisoners have attempted to organize, and protesters have registered outrage at government policies. All the while, prisoners with AIDS suffer in our jails and prisons from medical neglect and discrimination. Not only are their lives being threatened as a result of the deadly disease AIDS, so is their right to privacy, to due process, and to freedom from cruel and unusual punishment.



NPP photo

Judy Greenspan, AIDS information coordinator for the NPP, will contribute a regular column on AIDS in prison to the NPP JOURNAL.

The National Prison Project has taken the lead in fighting inhumane, unjust prison conditions and practices for both HIV-infected prisoners and prisoners with AIDS. The NPP opposes mandatory testing of prisoners, segregation based on seropositivity, and the denial of adequate medical care and programming for HIV-infected inmates and those with AIDS. (See "AIDS Policies Tested in Alabama Prison Case," *NPP JOURNAL*, Number 17, Fall 1988.)

The NPP has recently released three publications to aid this education campaign:

1988 Survey on AIDS and Prison

AIDS & Prison: The Facts for Inmates and Officers (available soon in Spanish)

1988 Bibliography on AIDS in Prison

While the newly issued AIDS and prison education booklet has been ordered by many jail and prison administrators, the most enthusiastic response to the booklet has come from prisoners. Prisoner publications such as the *Angolite* in Louisiana and *Pro Se* in New York have helped spread the word about the pamphlet, which is distributed free to prisoners. In the past three weeks, over 300 prisoners have requested copies of the booklet to distribute in their facilities. A group of Alabama state prisoners recently asked their prison to purchase 1,000 copies. When the corrections administration refused, the inmates began their own fundraising campaign to pay for the AIDS educational booklets.

Now, in addition to the other information made available, the *NPP JOURNAL* is beginning a regular column to keep readers informed about the most up-to-date facts on AIDS in prison. The column will be written by NPP AIDS information coordinator, Judy Greenspan. Some of the future articles will cover:

■ up-to-date information on legislation affecting prisoners with AIDS;

■ interviews with HIV-infected prisoners and PWAs (people with AIDS);

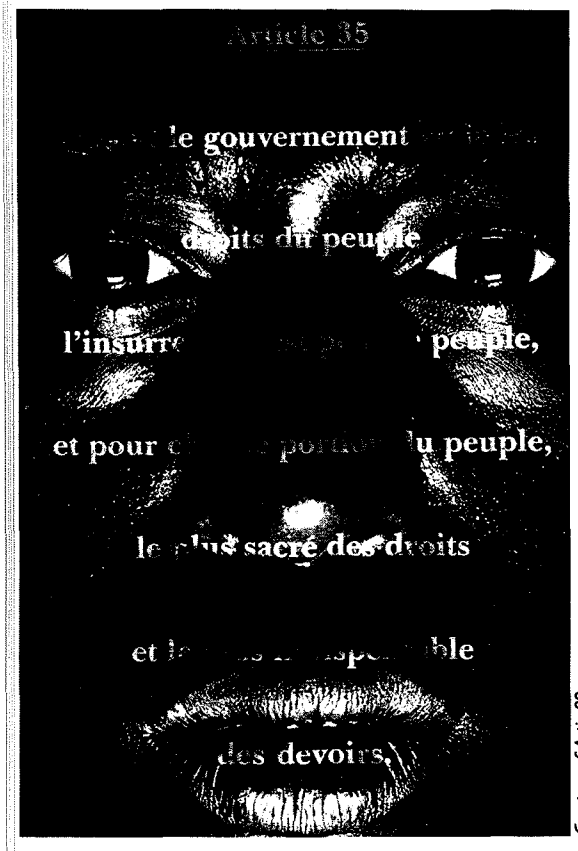
■ interviews with corrections and medical experts on AIDS;

■ the latest medical information on AIDS;

■ developments in the courts, particularly on AIDS cases which may affect prisoners.

Meaningful and ongoing education for both prisoners and corrections staff is our best weapon against the disease.

The Rights of Man exhibition will feature posters by internationally acclaimed poster artists, including these contributions by Roger Pfund of Switzerland (above) and M&CO of the U.S.A. (below).



Courtesy of Artis 89

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courage networking among association members and the broader justice community. USAVOM offers information services, a membership directory, a newsletter, a job bank service and an automated management information system. USAVOM also presents an annual conference and has scheduled this year's conference for June 10-13 in St. Paul, Minnesota.

The PACT Institute of Justice will provide administrative support to the new association. New memberships are encouraged. For more information, contact John Gehm, Secretary, U.S. Association for Victim-Offender Mediation, 254 S. Morgan, Valparaiso, IN 46383, 219/462-1127.

■ 1989 marks the Bicentenary of the French Revolution. To pay this occasion tribute, an international poster exhibition has been assembled by the French government-appointed "Mission for the Bicentenary of the French Revolution and the Declaration of the Rights of Man and the Citizen." The exhibition features original work by 65 of the world's most acclaimed poster artists who based their designs on the concept of the Declaration of the Rights of Man.

The show opens in May 1989 and will be shown simultaneously in hundreds of locations around the world. Arrangements have been made to place the exhibition in prisons in a number of countries, and discussions about the exhibit are taking place with prison officials in the U.S.

The exhibition was a prize-winning entry in the "Invent 89" competition organized by the Grande Halle at the Parc de la Villete, and is one of the few projects commemorating the Bicentenary with an international outreach.

For more information, contact Gilbert Fillinger and Bruno Ughetto, Artis 89, 48 rue Lepic, 75018, Paris, France.

■ The 13th Annual Conference on Correctional Health Care, sponsored by the National Commission on Correctional Health Care, will be held November 9-11, 1989, in Chicago. More than 600 professionals in correctional health care and related fields are expected to attend the conference, which is considered to be among the most important of all annual correctional health care educational meetings. The Commission includes representatives from 31 professional organizations concerned with health care or corrections. Conference planners are currently developing an agenda of speakers. For more information, contact NCCHC, 2000 N. Racine, Chicago, IL 60614, 312/528-0818.

■ The National Institute of Corrections (NIC) and the Kutak Foundation have made available the third monograph in the series, **Research in Corrections.**

"Pretrial Release: Concepts, Issues, and Strategies for Improvement," by Stevens H. Clarke, summarizes research and law on pretrial release and the effectiveness of various approaches for its improvement. Charles Worzella and Bowne Sayner, both of Wisconsin Correctional Services, and Michael Schumacher, chief probation officer in Orange County, California, respond with practical advice on applying Clarke's findings to local corrections.

Complimentary copies of this publication are available from the NIC Information Center, 1790 30th Street, Suite 130, Boulder, CO 80301. Single copies of the first monograph, "Statistical Pre-

Guns Kill People, Too

■ Researchers at the universities of Washington, British Columbia and Tennessee compared rates of various crimes between 1980 and 1986 to determine whether stringent Canadian restrictions on handguns, enacted in the late 1970s, affected the frequency of murders and assaults.

Although the overall rate of assaults in Seattle was only slightly higher than that of Vancouver (a city similar to Seattle in most respects other than its handgun laws), assaults involving firearms (about 85% involving handguns) were nearly eight times more frequent.

The study appeared in a November 1988 issue of *The New England Journal of Medicine*. Previous studies have been flawed, some experts say, because they compared data from countries with widely varying cultures. The authors said they chose Vancouver and Seattle because they are of similar size and share many geographic, economic, and cultural traits.

The report said that, while more research is needed, "the results suggest that a more restrictive approach to handgun control may decrease national homicide rates."

Paul Blackmun, research coordinator for the National Rifle Association, accused *The New England Journal of Medicine* of publishing "shoddy social science research."

Canada abolished the death penalty and enacted strict handgun control legislation in 1976. The Canadian homicide rate has gone down every year since, according to the Solicitor General of Canada.

diction in Corrections," by Todd Clear, Ph.D., and the second monograph, "The Effects of Diet on Behavior: Implications for Criminology and Corrections," by Drs. Diana Fishbein and Susan Pease, are also available at the same address.

Research in Corrections is edited by Joan Petersilia at the RAND Corporation in Santa Monica, California.

■ *Nurturing Today*, a quarterly journal, announces the publication of a special issue entitled "Families of Prisoners." This expanded, 48-page issue includes a wide range of articles by noted family and corrections authorities. Authors include Ellen Barry on prenatal care for pregnant mothers; Ann Adalist-Estrin on "Parenting Behind Bars"; Jean Harris on the Bedford Hills summer program for children; James W. Mustin on the role of the family in the correctional process; and John Smykla on families of death row inmates.

A special section, "The Fathers' Exchange," is devoted exclusively to articles on prison fathering. Another section, "Nurturing Program Review," looks at different institutional programs developed to improve the quality of family life.

"Families of Prisoners" also features an extensive list of resources, including a reading list for adults and children. Poetry, book and film reviews, and photographs round out the issue.

Single copies are available for $5; bulk orders are available at a 40% discount. A 50% discount is available on orders of 50 or more copies. To order, contact: *Nurturing Today*, 187 Caselli Avenue #A, San Francisco, CA 94114, 415/861-0847.

PUBLICATIONS

The National Prison Project *JOURNAL,* $25/yr. $2/yr. to prisoners.

The Prisoners Assistance Directory, the result of a national survey, identifies and describes various organizations and agencies that provide assistance to prisoners. Lists national, state, and local organizations and sources of assistance including legal, library, medical, educational, employment and financial aid. 8th Edition, published December 1988. Paperback, $25 prepaid from NPP.

Offender Rights Litigation: Historical and Future Developments. A book chapter by Alvin J. Bronstein published in the **Prisoners' Rights Sourcebook** (1980). Traces the history of the prisoners' rights movement and surveys the state of the law on various prison issues (many case citations). 24 pages, $2.50 prepaid from NPP.

QTY. COST

The National Prison Project Status Report lists by state those presently under court order, or those which have pending litigation either involving the entire state prison system or major institutions within the state. Lists only cases which deal with overcrowding and/or the total conditions of confinement. (No jails except District of Columbia.) Periodically updated. $3 prepaid from NPP.

Bibliography of Women in Prison Issues. A bibliography of all the information on this subject contained in our files. Includes information on abortion, behavior modification programs, lists of other bibliographies, Bureau of Prison policies affecting women in prison, juvenile girls, women in jail, the problem of incarcerated mothers, health care, and general articles and books. $5 prepaid from NPP.

A Primer For Jail Litigators is a detailed manual with practical suggestions for jail litigation. It includes chapters on legal analysis, the use of expert witnesses, class actions, attorneys' fees, enforcement, discovery, defenses' proof, remedies, and many practical suggestions. Relevant case citations and correctional standards. 1st Edition, February 1984. 180 pages, paperback $15 prepaid from NPP.

QTY. COST

The **Jail Litigation Status Report** gives a state-by-state listing of cases involving jail conditions in both federal and state courts. The **Report** covers unpublished opinions, consent decrees and cases in progress as well as published decisions. The **Report** is the first nationwide compilation of litigation involving jails. 1st Edition, published September 1985. $15 prepaid from NPP.

AIDS in Prison Bibliography lists resources on AIDS in prison that are available from the National Prison Project and other sources, including corrections policies on AIDS, educational materials, medical and legal articles, and recent AIDS studies. 31 pages. $5 prepaid from NPP.

AIDS in Prisons: The Facts for Inmates and Officers is a simply written educational tool for prisoners, corrections staff, and AIDS service providers. The booklet answers in an easy-to-read format commonly asked questions concerning the meaning of AIDS, the medical treatment available, legal rights and responsibilities. Sample copies free. Bulk orders: 100 copies/$25. 500 copies/$100. 1,000 copies/$150 prepaid.

QTY. COST

Fill out and send with check payable to

The National Prison Project
1616 P Street, NW
Washington, D.C. 20036

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HIGHLIGHTS

The following are major developments in the Prison Project's litigation program since November 15, 1988. Further details of any of the listed cases may be obtained by writing the Project.

Baraldini v. Meese—This case alleges that the Federal Bureau of Prisons assigned plaintiffs to the High Security Unit in the Lexington Federal Penitentiary in violation of their First, Fifth and Eighth Amendment rights. In September, defendants appealed the district court's decision in favor of the plaintiffs, and oral argument was held March 17, 1989, in the D.C. Court of Appeals.

Harris v. Thigpen—This case challenges the Alabama Department of Corrections' program to test all prisoners for HIV antibodies, and to segregate those who test HIV-positive. On November 22, the court denied defendants' motion for summary judgment on the testing issue, citing their failure to state any rationale for their mandatory testing program. A trial was scheduled in late March, 1989.

Inmates of Occoquan v. D.C.—This case seeks to improve conditions and relieve overcrowding at the District of Columbia's Occoquan facility. Parties engaged in intense settlement negotiations but were unable to reach an agreement before the scheduled trial date. Trial was completed in January 1989, and post-trial briefs were filed in March.

Maryland Jails: Hendricks v. Welch, Macer v. DiNisio, Dotson v. Satterfield—These cases, filed by the Prison Project and the Maryland ACLU, challenge conditions and practices in three jails on Maryland's Eastern Shore. In November, the court granted our fee petition in *Dotson* in full. Defendants filed motions asking the court to reconsider its order, but their motions were denied on January 20, 1989. Our fee claim in *Hendricks* was settled in February.

Palmigiano v. DiPrete—This case challenges conditions in the Rhode Island state prison system. The parties and the judge met for a status conference on January 31, 1989, to discuss the defendants' plan to relieve overcrowding. Defendants, who were found in contempt for violating population limits at the Intake Center, must achieve full compliance with the court order by February 20 or pay fines which could amount to $10,000 a day. Discovery commenced on overcrowding at other facilities.

Anderson v. Orr—In 1987, the National Prison Project joined as co-counsel in this pending suit challenging conditions at the Westville Correctional Center in Westville, Indiana. A settlement agreement has been filed with the court covering all issues and we are awaiting approval.

Dickerson v. Castle—This case challenges conditions in the Delaware prison system. In November, the Court of Chancery in Delaware approved a settlement covering all four of Delaware's major prisons. The settlement includes provisions covering overcrowding, physical plant improvements and sanitation, medical care, and access to the courts. Legal Aid of Delaware will undertake primary monitoring of compliance.

Estevez v. Phelps—This new case, filed with the Tulane University Law Clinic and the New Orleans ACLU affiliate, challenges conditions in the Orleans Parish Prison in New Orleans, Louisiana. The alleged unconstitutional conditions include inadequate medical and psychiatric care, overcrowding, unsanitary living conditions, and high levels of violence. The facilities house both pre-trial and sentenced prisoners, women, juveniles, federal prisoners and mentally ill individuals awaiting bed space in state mental hospitals.

Murray v. Giarratano—This case, filed by a former named plaintiff in the Mecklenburg Correctional Center case, challenges the denial of access to court for prisoners on death row in Virginia. Following a favorable decision in the trial court and full Fourth Circuit Court of Appeals, the Supreme Court granted review. We filed a friend of the court brief in the Supreme Court urging affirmance.

Knop v. Johnson—Our favorable decision involving conditions in four Michigan prisons has been appealed and our first brief was filed in January. A hearing on our claim for attorneys' fees was held in early March.

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American Civil Liberties Union Foundation
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New AIDS Update Column.
See page 13.